IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

WP(C).No. 17942 of 2006(J)

OS.784/2005 of PRL.M.C.,ERNAKULAM

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PETITIONERS:

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1. STAR INDIA PRIVATE LIMITED,
   205-206, OKHLA INDUSTRIAL ESTATE, PHASE III,
   NEW DELHI-110 020, REPRESENTED BY ITS CEO.

2. THE OFFICER IN-CHARGE,
   STAR INDIA PRIVATE LIMITED, EMBASSY POINT,
   3RD FLOOR, # 150, INFANTRY ROAD, BANGALORE,
   KARNATAKA.

3. THE TERRITORY MANAGER,
   SINCE RE-DESIGNATED AS AREA SALES MANAGER,
   STAR INDIA PRIVATE LIMITED G-46, 1ST FLOOR,
   PANAMPILLY NAGAR, KOCHI, KERALA.

BY ADV. SRI.P.B.SURESH KUMAR

RESPONDENT:

ASIANET SATELITE COMMUNICATIONS PVT.LTD.
3RD FLOOR, KARIMPANAL ARCADE, EAST FORT,
TRIVANDRUM-695 023, REPRESENTED BY ITS
REGIONAL HEAD (ERNAKULAM), MR.MAHESH KUMAR.

BY ADV. SRI.V.GIRI
SRI.SAJI VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)17942/06

APPENDIX

PETITIONERS EXHIBITS

EXT.P1: TRUE COPY OF NOTICE ISSUED BY FIRST PETITIONER TO THE RESPONDENT DATED 7.4.05

EXT.P2: TRUE COPY OF ORDER PASSED BY TRIBUNAL IN PETITIN NO.39(C) OF 2004 DATED 8.4.05.

EXT.P3: TRUE COPY OF ORDER PASSED BY SUB COURT, ERNAKULAM IN I.A.2120/05 IN O.S.236/05 DATED 25.5.05.

EXT.P4: TRUE COPY OF PRESS RELEASE ISSUED BY RESPONDENT IN MATHRUBHOOMI DAILY DATED 13.5.05.

EXT.P5: TRUE COPY OF PUBLIC NOTICE ISSUED BY FIRST PETITIONER IN MALAYALA MANAORAMA DAILY DATED 2/6/05.

EXT.P6: TRUE COPY OF PLAINT IN O.S.784/05 ON THE FILE OF MUNSIFF COURT, ERNAKULAM DATED 3.6.05.

EXT.P7: TRUE COPY OF IA 4865/05 IN O.S.784/05 BEFORE MUNSIFF COURT, ERNAKULAM ALONG WITH THE AFFIDAVIT FILEDIN SUPPORT OF THE SAME, DATED 3.6.05.

EXT.P8: TRUE COPY OF COUNTER AFFIDAVIT FILED BY PETITIONRS TO EXHIBIT P7 APPLICATION DATED 22.6.05.

EXT.P9: TRUE COPY OF REPLY AFFIDAVIT IFLED BY RESPONDENT IN I.A.4865/05 IN O.S.784/05 DATED 7.7.05.

EXT.P10: TRUE COPY OF ORDER OF MUNSIFF COURT IN I.A.4865/05 IN O.S.784/05 DATED 7.7.05.

EXT.P11: TRUE COPY OF JUDGMENT IN C.M.APPEAL 91/05 OF DISTRICT COURT, ERNAKULAM DATED 12.4.06.

/TRUE COPY/

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.17942 OF 2006

DATED THIS THE 24th DAY OF JANUARY, 2007

JUDGMENT

Petitioners are defendants and respondent plaintiff in O.S. 784/05 on the file of Munsiff Court, Ernakulam. The suit was filed "for a permanent prohibitory injunction restraining defendants from making any false or defamatory statements against the plaintiff by publishing notices or advertising in newspapers and also asking the subscribers of the plaintiff not to pay the full subscription charges to the plaintiff or to take connection from any other subscriber after disconnecting the connection of the plaintiff and not to interfere in the contractual relationship between the plaintiff and the customers in any manner". Along with the suit, respondent filed I.A.4865/05, an application under Order XXXIX Rule 1 of Code of Civil Procedure seeking an order of temporary injunction restraining petitioners from publishing any notice defamating them. Under Ext.P10 order, Munsiff granted an order of temporary injunction, rejecting the claim of petitioners that Civil Court has no jurisdiction to try the suit or to grand the relief sought for. Petitioners challenged that order before District Court, Ernakulam in C.M.A.91/05. Additional District Judge analysed the contentions and under Ext.P11 order confirmed the order but made it clear that the

order granted in favour of respondent will not affect the right of petitioners, in exercising their powers provided under the TRAI Act. This petition is filed under Article 227 of Constitution of India challenging the order contending that the Courts did not properly consider the question whether Civil Court has jurisdiction to try the suit in view of the bar provided under Section 15 of the TRAI Act. Exts.P10 and P11 orders are therefore to be quashed.

2. Learned Counsel appearing for petitioners argued that under Section 15 of The Telecom Regulatory Authority of India Act,1997 (herein after referred to as the 'Act'), no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Appellate Tribunal constituted under Section 15 is empowered by or under the Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act and under Section 14, the Appellate Tribunal known as the Telecom Disputes Settlement and Appellate Tribunal, notified by Central Government has the power to adjudicate any dispute between two or more service providers and as the dispute is to be settled by the Telecom Disputes Settlement and Appellate Tribunal, Civil Court has no jurisdiction to adjudicate the dispute including the question whether it is a dispute coming under Section14 of the Act.

3. Arguments of learned Counsel appearing for petitioners was that the dispute between petitioners, the broad caster and respondent the service provider is a dispute, which is to be settled by Telecom Dispute Settlement Appellate Tribunal and under Section 15 of the Act, Civil Court has no jurisdiction and therefore the orders are to be quashed.

4. Learned Counsel appearing for petitioners argued that under the regulations notified by Telecom Regulatory Authority of India, disconnection of TV channel signals is provided under Regulation 4 and under Regulation 4.1 no broad caster or multi system operator shall disconnect T.V. Channel signals to a distributor of T.V. Channels without giving one month's notice indicating the brief reasons for the proposed actions and Regulation 4.2 provides that the broadcaster/multi-system operator shall inform the consumer about the dispute to enable them to protect their interests and notice to discontinue signal shall also be given in two local newspapers, in case the distributor of TV channels is operating in local areas and in two national papers in case the distributor of TV channels is providing services in a wide area. Argument was that under Regulation 4.2, petitioners being the broad casters have a duty to inform the consumers about the dispute and they shall issue notice to discontinue the channels as provided under Regulation 4.2. According to the learned Counsel,

Ext.P5 notice, which is alleged to be a defamatory notice was issued as provided under Regulation 4.2 and the question whether it is a notice which comes under Regulation 4.2 is a matter to be decided only by Appellate authority constituted under the Act and Civil Court has jurisdiction to adjudicate that dispute and therefore the orders are to be set aside.

5. Learned Counsel appearing for respondent argued that the dispute involved in the suit is not a dispute coming within the scope of Section 14, as rightly found by the Courts below and the relief sought for in the suit is only against making any false or defamatory statements, by publishing notice or advertising in newspapers and also asking subscribers of respondent not to pay full subscription charges or to take connection from another operator and petitioners have no right to issue any such notice and Civil Court is competent to decide the said questions or grand interim relief and the discretion exercised by the trial Court or the appellate Court cannot be interfered in exercise of the extraordinary jurisdiction of this Court under Article 227 of Constitution of India.

6. The Act was enacted to provide for the establishment of Telecom Regulatory Authority of India and Telecom Disputes Settlement and Appellate Tribunal, to regulate telecommunication services, adjudicate disputes, dispose of appeals and to protect interest of service providers and consumers to promote and ensure

orderly growth of telecom sector and for matters connected therewith or incidental thereto. Section 14 provides for establishment of Appellate Tribunal. It reads:

"**Establishment of Appellate Tribunal**.- The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to-

(a) adjudicate any dispute-

(i) between a licensor and a licensee;
(ii) between two or more service providers;
(iii) between a service provider and a group of consumers:

Provided that nothing in this clause shall apply in respect of matters relating to-

(A) the monopolisitic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969);

(B) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or the National Consumer Redressal Commission established under Section 9 of the Consumer Protection Act, 1986(68 of 1986);

© dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act, 1885 (13 of 1885);

(b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act."

Section 15 provides for bar of jurisdiction of Civil Courts . It reads:

> "**Civil Court not to have jurisdiction**.- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

As per notification dated 10.12.2004, Telecom Regulatory Authority made the Regulations called The Telecommunication (Broad casting and cable) services Interconnection Regulation 2004.

Regulation 4 reads:

> "4. Disconnection of TV channel signals
>
> 4.1 No broad caster or multi system operator shall disconnect the TV channel signals to a distributor of TV channels without giving one month notice indicating the brief reasons for the proposed action:
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> Provided that in case a distributor of TV channel is re-transmitting signals for which he/she is not authorized and thereby affecting the commercial interest of the concerned broadcaster or multi system operator, the notice period shall be two working days giving reasons to the concerned distributor of TV channel for such action.
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> Explanation
>
> A distributor of TV channels is said to be authorised if there exists any agreement between the broadcaster, including his/her agents permitting the distribution of the broadcasting service by the said distributor of TV channels,either through a written agreement or through an oral agreement. Consequently no notice would be required if there is no agreement, written or

> oral, permitting the distribution of the broadcasting service.
>
> 4.2 Broadcaster/multi system operator shall inform the consumers about the dispute to enable them to protect their interests. Accordingly, the notice to discontinue signal shall also be given in two local newspapers in case the distributor of TV channels is operating in local area and in two national papers in case the distributor of TV channels is providing services in a wide area. Alternatively, consumers can be informed through scroll on the concerned channel (s). Where a Broadcaster or a Multi System Operator decides to give this notice through a scroll the Multi System Operator or the Cable Operator, as the case may be, must carry the scroll in the concerned channel(s)"

The notice contemplated under Regulation 4.1, is a notice by the broad caster or multi system operator to a distributor indicating the brief reasons for the proposed action of disconnection. Regulation 4.2 only provide that the broad caster or multi system operator shall inform the consumers about the dispute and the purpose is only to enable them to protect their interest. The notice or information contemplated under Regulation 4.1 or 4.2 cannot be a notice, advertisement or publication like the one sought to be restrained by filing the suit. Hence it cannot be said that it is a dispute which is to be adjudicated by the Appellate Tribunal as provided under Section 14 of the Act. Only if it is a dispute coming within the scope of Section 14, the bar of jurisdiction of Civil Courts under Section 15 operates.

7. On hearing learned Counsel appearing for petitioners

and respondent, I do not find any illegality or irregularity in the order passed by the Court below. Though "dispute" is not defined under the Act, all disputes cannot be said to be a dispute which is to be settled by Telecom Disputes Settlement and Appellate Tribunal, constituted under Section 14 of the Act. The relief sought for in the suit is only to restrain petitioners from making any false or defamatory statements against respondent by publishing notices or advertising in newspapers or asking the subscribers of plaintiffs not to pay the full subscription charges or to take connection from any other subscriber, after disconnecting the connection taken from respondent. Petitioners cannot be heard to contend that they have a right to issue such a notice under Section 14. The question whether petitioners are entitled to issue such a notice is not a matter to be decided by the Appellate authority constituted under Section 14 of the Act. If that be so, the finding of the trial Court or the Appellate Court that Civil Court has jurisdiction to try the disputes raised in the suit, is perfectly correct and warrants no interference, in exercise of the extraordinary jurisdiction of this Court under Article 227 of Constitution of India.

Writ petition is dismissed.

M.SASIDHARAN NAMBIAR,JUDGE

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